IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7392 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAIDHAN MOHANBHAI BORICHA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7392 of 2002

MR AR SHAIKH for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 22-7-2002, by which he is detained as a "bootlegger" under the Prevention of Antisocial Activities Act, (for short "the PASA" Act). Along with the order of detention he is also served with the grounds of detention of the same date. In the said grounds, there is a reference about two criminal cases which are pending against the petitioner under the Bombay Prohibition Act. The detaining authority has also considered the statement of certain witnesses. After having been satisfied about the alleged act of the petitioner, the detaining authority has passed the said detention order. The petitioner has challenged the aforesaid order on various grounds.

2) The learned advocate for the petitioner submitted that there is a delay in deciding the representation of the petitioner. It is submitted that the petitioner made a representation to the Home Minister on 29-7-2002. The said representation was sent by way of Regd.Post A.D. However, the authority has decided the said representation as late as on 13th August, 2002. It is submitted that in view of the delay in deciding the representation, the order of detention is required to be set aside. The petitioner has placed on record, a copy of the communication received from the Home Department dated 14th August, 2002, wherein it is stated that the representation is rejected on 13-8-2002. The affidavit in reply is filed by the detaining authority. Even in the reply the detaining authority has merely stated that the State Government has decided the representation without any delay. However, the State has not filed any reply, explaining the delay of the period during which the representation was kept pending. There is nothing on record to state as to why the representation was not decided promptly and as to why it was kept pending upto 13th August, 2002, which was sent as back as on 29th July, 2002. The authority has not stated as to on which date the authority has received the said representation.

3) Under these circumstances and in view of the unexplained delay in deciding the representation, this petition is required to be allowed and it is accordingly allowed. The order of detention dated 22-07-2002 is quashed and set aside. The detenu, Raidhan Mohanbhai Boricha is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)

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